IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1017 OF 2002

IN

FIRST APPEAL NO.632 OF 2002

The Municipal Corporation of Gr.Bombay. ... Applicants

Versus

M/s.Goyal Bros and Ors. ... Respondents

WITH

CIVIL APPLICATION NO.307 OF 2002

IN

FIRST APPEAL NO. 709 OF 2004

Ramsurat Nema Mishra .... Applicant

Versus

M/s.Goyal Bros. & ors. .... Respondents

WITH

CIVIL APPLICATION NO.308 OF 2002

IN

FIRST APPEAL NO.710 OF 2004

Ramsurat Nema Mishra ... Applicant

Versus

M/s.goyal Bros. and Ors. ... Respondents

Mr.N.V.Walawalkar with M.D.Patil for applicant

Mr.M.V.Pandey for petitioner in F.A.No.709 & 710 of 2004

Mr.J.G.Damani for Respondent Nos.4 and 5

Ms.Pawar for Respondent No.6

CORAM : P.V.KAKADE, J.

DATE : 8TH OCTOBER, 2004

P.C.:

1. Heard the learned counsel for the applicant as well as all the respondents.

2. By these applications the Applicants are seeking

continuation of the Court Receiver, who was appointed by Order dated 15.9.1995 passed in Notice of Motion No.707 of 1993 in L.C.Suit No.8058 of 1993 by the City Civil Court, Bombay, who was continued on the same terms and conditions as fixed by this Court by Order dated 10.11.1998 passed in W.P.No.5516 of 1998.

. The appointment of the Court Receiver came to be terminated as the suit of the Corporation came to be dismissed for which First Appeals are filed, which are pending and these applications are filed in the said First Appeals.

3. Mr. Walawalkar the learned counsel for the applicant took me through the entire history of the litigation and therefore, I need not advert to the same, except referring to the observations in Notice of Motion which was decided on 22.6.1993 whereby the City Civil Court issued certain directions in order to upheld the majesty of law. The order passed by Single Judge of this Court dated 10.11.1998 is also perused where under the Court Receiver came to be appointed in order to guard the interest of present Respondent No.6, who prima facie, appears to be victim of the alleged attitude of

the builder with regard to the suit premises. In other words, it is the case of the respondent no.6 as well as the Corporation that he was deprived of his legitimate right to occupy shop No.20 in the building but was side-tracked by the concerned builder. Be as it may, the fact remains that the appeals are pending in this Court against the impugned order passed by the City Civil Court as a result of which the Court Receiver came to be discharged, who was appointed earlier pending the Suit. It is needless to mention, taking into account the facts and circumstances involved in this dispute, that protection of Shop No.20 is necessary pending adjudication of the appeals for which purpose the Receiver would be the best person to guard the interest of Respondent No.6 as well as to protect the property.

4. The learned counsel for Respondent Nos.4 and 5 who submitted that his clients are bonafide purchasers of Shop No.20 and unnecessarily suffered in this dispute. However, it must be noted that if he wants to blame anybody he would have to blame the builder in this case, but he cannot be put in possession of Shop No.20 side-tracking the alleged right of respondent no.6, which is the subject matter of present dispute. A

suggestion was also made to Respondent Nos.4 and 5 that one more premises which is available at Manik Nagar area and is under Court Receiver’s control, could be sought by him by following proper procedure. Be as it may, the fact remains that this is a fit case to continue the Court Receiver on the same terms and conditions which were prevalent during the time of pending the suit.

5. Hence in view of the facts and circumstances the applications are made absolute in terms of prayer clause (a) and stand disposed of with no order as to costs.